

BEFORE THE
Federal Communications Commission
WASHINGTON, D. C.

In the Matter of)
)
Implementation of Section 9)
of the Communications Act)
)
Assessment and Collection of)
Regulatory Fees for the 1994)
Fiscal Year)
)
Notice of Proposed Rulemaking)

MD Docket No. 94-19

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

COMMENTS

KBS License L.P. ("KBS"), licensee of KWCH-TV, Hutchinson, Kansas, 1/ by its attorneys, submits these brief Comments in response to the Commission's Notice of Proposed Rulemaking in the above-referenced proceeding. These Comments are limited to addressing the last sentence of Paragraph 67 -- a sentence that thoughtlessly would require "satellite" television stations to pay regulatory fees on the same basis as full-power television stations. 2/ As a result, KBS' small operation in western Kansas will pay 78 percent more in annual fees than a top-ten market VHF station. Accordingly, KBS urges the Commission to reject this proposal because it is inconsistent with Section 9 of the Communications

1/ KBS is also the licensee of the following satellite stations: KBSD-TV, Ensign, Kansas; KBSH-TV, Hays, Kansas; and KBSL-TV, Goodland, Kansas. With the exception of local news inserts and an occasional local program, the satellite stations merely retransmit the programming of KWCH-TV.

2/ Implementation of Section 9 of the Communications Act (Notice of Proposed Rulemaking), MD Docket No. 94-19 ¶ 67 (rel. Mar. 11, 1994).

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Act, and it will illogically and unfairly burden licensees that attempt to provide programming to underserved, sparsely-populated areas.

I. The Satellite Fee Proposal Contradicts Section 9 of the Communications Act.

The Commission's proposal to treat satellite television stations the same as full-power television stations for purposes of assessing spectrum fees is inconsistent with Section 9 of the Communications Act, which the Commission's proposed rules seek to implement. First, Section 9 of the Communications Act does not require such similar treatment. ^{3/} Second, Section 9 of the Act directs the Commission to assess regulatory fees in order "to recover the costs of the following regulatory activities of the Commission: enforcement activities, policy and rulemaking activities, user information services, and international activities." ^{4/} Yet satellite television stations do not impose the same regulatory burden on the Commission as full-power television stations.

By definition, satellite television stations retransmit all or part of the programming of a parent station that ordinarily is commonly owned. ^{5/} Given the reliance of satellite television stations upon full-power stations for all or most of their programming and the unified relationship of most satellite and parent stations, the operation of satellite television stations barely increases the

^{3/} Congress established fees of between \$4,000 and \$18,000 for commercial television stations. It did not set any fee requirements for satellite television stations. See Pub. L. No. 103-66, § 6003(a)(1), 107 Stat. 312, 397-401 (1993).

^{4/} Pub. L. No. 103-66, § 6003(a)(1), 107 Stat. at 397.

^{5/} See Television Satellite Stations, Review of Policy and Rules, 6 FCC Rcd 4212 (1991). These satellite stations typically retransmit programming to small or sparsely-populated areas with insufficient economic bases to support full-service operations or to areas which cannot provide viewers with a choice of multiple program services. See id.

Commission's regulatory activities. It is inconceivable that satellite television stations would participate in policy and rulemaking activities independently of their originating stations. They usually face the same issues as their parent stations and do not require additional use of the Commission's information services. Furthermore, satellite television stations do not impose the same enforcement obligations as their parent stations since typically they rebroadcast programming originating from the parent station and do not have to file separate EEO and Ownership Reports. Since the regulatory burdens imposed upon the Commission by the operation of satellite television stations are minimal in comparison to the burdens imposed by full-power stations, Section 9 of the Communications Act does not support the assessment of fees on the same basis as full-power television stations.

II. The Commission's Proposal Would Unfairly and Illogically Burden Licensees Serving Expansive Markets.

The Commission's proposal to assess the same fees for full-power and satellite television stations would also have the perverse effect of imposing similar or higher fees on small-market licensees which use satellite stations to extend service to remote areas than on large-market licensees which serve over ten times the number of households without any satellite stations. KBS' situation exemplifies the unfairness and irrationality of this proposal.

KBS' full-power station, KWCH-TV, is a CBS affiliate in the Wichita-Hutchinson, Kansas Area of Dominant Influence ("ADI"), the country's 61st largest television market, encompassing 422,700 households and spanning the central and western portions of Kansas. ^{6/} According to the schedules established by Congress and the Commission, television licensees in this size market should be assessed

^{6/} See Broadcasting & Cable Yearbook 1993, vol. 1, C-212.

regulatory fees of \$8,000.00 in fiscal year 1994. ^{7/} However, KBS is also the licensee of three satellite stations in the sparsely-populated western portion of the Wichita-Hutchinson ADI, thereby permitting it to extend *the only* CBS service to these portions of the state. Under the Commission's proposal for the treatment of satellite stations, KBS would thus be assessed regulatory fees of \$32,000, rather than \$8,000. ^{8/}

KBS' \$32,000 fee for its television licenses would be \$14,000, or 78 percent, higher than the fee assessed against a full-power VHF station licensed to the New York television market, the largest market in the country. There are 6,760,400 households in the New York ADI -- 16 times the number of households in the Wichita-Hutchinson ADI. ^{9/} Commercial VHF stations licensed to the populous New York market have larger budgets and a much greater ability to absorb the Commission's regulatory fees than KBS. Moreover, given the size of their audiences and budgets, New York stations undoubtedly generate far more viewer complaints requiring the attention of the Commission's enforcement arm,

^{7/} See Pub. L. No. 103-66, § 6003(a)(1), 107 Stat. at 397 (1993); Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, MD Docket No. 94-19 ¶ 67 (rel. Mar. 11, 1994).

^{8/} KBS would be assessed a fee of \$8,000 for KWCH-TV, plus a fee of \$8,000 for each of its satellite stations, resulting in a total fee of \$32,000. This calculation presumes that the Commission will rely upon the Arbitron Company's "Television Markets and Ranking Guide" to determine a television licensee's appropriate market and resulting fee. Of course, it is not entirely clear that the Commission will use this source. See Implementation of Section 9 of the Communications Act (Notice of Proposed Rulemaking), MD Docket No. 94-19 ¶ 69 (rel. Mar. 11, 1994). However, even if the Commission uses another method for determining a licensee's television market and market ranking, KBS would be required to pay a similarly outrageous fee in order to extend service to remote, underserved areas under the Commission's proposal for the treatment of satellite television stations.

^{9/} See Broadcasting & Cable Yearbook 1993, vol. 1, C-212.

participate more frequently in policy and rulemaking activities, and face more issues requiring reliance upon the Commission's user information services than KBS' full-power television station and three satellite stations combined. It is thus patently unfair and illogical to charge licensees in KBS' situation more than large-market VHF television stations.

III. Conclusion

The Commission's proposal to assess satellite television licensees regulatory fees on the same basis as full-power television stations is inconsistent with Section 9 of the Communications Act. Congress intended the Commission to charge licensees fees based on the regulatory burden they impose upon the Commission, yet satellite television stations require much less regulatory oversight and activity than full-power television stations. In addition, the proposal would place an unfair and illogical burden upon small-market licensees who use satellite television stations to reach remote areas in their television markets. As a result of the proposal, a full-power television licensee in a small market which uses satellite stations to reach underserved areas would pay substantially more regulatory fees than a powerful station in the largest market in the country that reaches millions

more viewers. For the foregoing reasons, KBS respectfully urges the Commission to revise its proposal to assess separate fees for satellite stations.

Respectfully submitted,

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